

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

FILED
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SUMMARY ORDER

U.S. DISTRICT COURT
DISTRICT OF MASS

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the Eighth day of October Two thousand four.

PRESENT:

ROGER J. MINER
JOSÉ A. CABRANES
CHESTER J. STRAUB
Circuit Judges

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UNITED STATES OF AMERICA

Appellee,

-v.-

No. 03-1515

EMILIO RAMOS

Defendant-Appellant.

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SUBMITTED FOR APPELLANT: Howard M. Simms, New York, New York

SUBMITTED FOR APPELLEE: David C. James, Assistant United States Attorney
(Eric R. Komitee, Assistant United States Attorney, *of counsel*, Roslynn R. Mauskopf, United States Attorney, *on the brief*), United States Attorney's Office for the Eastern District of New York, Brooklyn, New York

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3 Appeal from a judgment of the United States District Court for the Eastern District of
4 New York (Allyne R. Ross, *Judge*).

5
6 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED,**
7 **AND DECREED** that the judgment of the District Court is hereby **AFFIRMED**.
8

9 Defendant appeals from a judgment convicting him, after a jury trial, of knowingly
10 and intentionally possessing a firearm, in and affecting commerce, after having previously
11 been convicted of a felony, in violation of 18 U.S.C. § 922(g)(1).

12 Defendant argues that the firearm in question should have been suppressed as evidence
13 because it was the product of an illegal detention and search under the Fourth Amendment.
14 Following a motion to suppress, the District Court held a suppression hearing and denied the
15 motion, finding that the totality of the observations of the police detective gave rise to a
16 reasonable suspicion that defendant was engaged in illegal activity.

17 “When examining a ruling on a motion to suppress, ‘we review the district court’s
18 factual findings for clear error and its conclusions of law de novo,’ viewing the evidence ‘in
19 the light most favorable to the prevailing party.’” *United States v. Awadallah*, 349 F.3d 42, 71
20 (2d Cir. 2003) (quoting *United States v. Harrell*, 268 F.3d 141, 145 (2d Cir. 2001)).

21 In his testimony at the suppression hearing, Detective Johnson testified to facts
22 sufficient to raise a reasonable articulable suspicion that criminal activity was afoot. The
23 District Court found this evidence credible and we find nothing in the record to suggest that
24 the Court’s findings were clearly erroneous. *See* Fed. R. Crim. P. 52(a). We therefore affirm

1 the ruling of the District Court, primarily for the reasons stated by the District Court in its
2 oral ruling denying the motion to suppress.

3 Defendant's argument that 18 U.S.C. § 922(g)(1) is unconstitutional in light of *United*
4 *States v. Lopez*, 514 U.S. 549 (1995), *United States v. Morrison*, 529 U.S. 598 (2000), and *Jones v.*
5 *United States*, 529 U.S. 848 (2000), has already been considered and rejected by this Court in
6 *United States v. Santiago*, 238 F.3d 213 (2d Cir. 2001). We see no reason to reconsider that
7 holding here.

8 We have considered all of defendant's claims on appeal and found them to be without
9 merit. We hereby **AFFIRM** the judgment of the District Court.

10
11 FOR THE COURT,

12 Roseann B. MacKechnie, Clerk of Court

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15 By _____